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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,164	03/26/2004	Steve Beaudin	7000-323	2009
27820 7590 07/06/2009 WITHROW & TERRANOVA, P.L.L.C. 100 REGENCY FOREST DRIVE SUITE 160 CARY, NC 27518				
EXAMINER WENDELL, ANDREW				
ART UNIT		PAPER NUMBER		
2618				
MAIL DATE		DELIVERY MODE		
07/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,164

Applicant(s)

BEAUDIN ET AL.

Examiner

ANDREW WENDELL

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 7,181,243 in view of Javor et al. (US Pat Pub# 2004/0266356).

Regarding claim 1, method claim 1 is rejected for the same reason as apparatus claim 16 since the recited elements would perform the claimed steps.

Regarding claim 2, method claim 2 is rejected for the same reason as apparatus claim 17 since the recited elements would perform the claimed steps.

Regarding claim 3, method claim 3 is rejected for the same reason as apparatus claim 18 since the recited elements would perform the claimed steps.

Regarding claim 4, method claim 4 is rejected for the same reason as apparatus claim 19 since the recited elements would perform the claimed steps.

Regarding claim 5, method claim 5 is rejected for the same reason as apparatus claim 20 since the recited elements would perform the claimed steps.

Regarding claim 6, method claim 6 is rejected for the same reason as apparatus claim 21 since the recited elements would perform the claimed steps.

Regarding claim 7, method claim 7 is rejected for the same reason as apparatus claim 22 since the recited elements would perform the claimed steps.

Regarding claim 8, method claim 8 is rejected for the same reason as apparatus claim 23 since the recited elements would perform the claimed steps.

Regarding claim 9, method claim 9 is rejected for the same reason as apparatus claim 24 since the recited elements would perform the claimed steps.

Regarding claim 10, method claim 10 is rejected for the same reason as apparatus claim 25 since the recited elements would perform the claimed steps.

Regarding claim 11, method claim 11 is rejected for the same reason as apparatus claim 26 since the recited elements would perform the claimed steps.

Regarding claim 12, method claim 12 is rejected for the same reason as apparatus claim 27 since the recited elements would perform the claimed steps.

Regarding claim 13, method claim 13 is rejected for the same reason as apparatus claim 28 since the recited elements would perform the claimed steps.

Regarding claim 14, method claim 14 is rejected for the same reason as apparatus claim 29 since the recited elements would perform the claimed steps.

Regarding claim 15, method claim 15 is rejected for the same reason as apparatus claim 30 since the recited elements would perform the claimed steps.

Regarding claim 16, Nicholls teaches Base station electronics for combining signals for transmission between a masthead and a base housing in a base station environment, the base station electronics comprising in the masthead: a) a first input adapted to receive a first receive signal centered about a first center frequency from a first antenna; b) a second input adapted to receive a second receive signal centered about the first center frequency from a second antenna; c) first translation circuitry adapted to translate the first receive signal from the first antenna to being centered about a second center frequency; and d) combining circuitry adapted to combine the first receive signal centered about the second center frequency and the second receive signal to form a composite signal, which is sent to base housing electronics over a feeder cable (Claim 12, note Nicholls claim 12 has more limitations than applicant's claim, but the claim is broader and still reads on Nicholls limitations). Nicholls fails to teach a first receive signal is different from a second receive signal.

Javor teaches a first receive signal is different from a second receive signal (Claim 14).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a first receive signal is different from a second receive signal as taught by Javor into Nicholls frequency translation apparatus in order to improve interference (Section 0001).

Regarding claim 17, Nicholls teaches wherein the first receive signal centered about the second center frequency is combined with the second receive signal centered about the first center frequency to form the composite signal (Claim 13).

Regarding claim 18, Nicholls teaches wherein the first center frequency and the second center frequency are sufficiently spread to minimize interference between the first and second receive signals in the composite signal (Claim 14).

Regarding claim 19, Nicholls teaches second translation circuitry adapted to translate the second receive signal from the second antenna to being centered about a third center frequency, wherein the first receive signal centered about the second center frequency is combined with the second receive signal centered about the third center frequency to form the composite signal (Claim 15).

Regarding claim 20, Nicholls teaches wherein the second center frequency and the third center frequency are sufficiently spread to minimize interference between the first and second receive signals in the composite signal (Claim 16).

Regarding claim 21, Nicholls teaches wherein the second antenna is a main antenna also used to transmit signals centered about the first center frequency, and the first antenna is a diversity antenna associated with the second antenna, the base station electronics further comprising circuitry adapted to transmit a transmit signal via the main antenna (Claim 17).

Regarding claim 22, Nicholls teaches wherein a plurality of receive signals, including the second receive signal, are received and translated to being centered

about different center frequencies and combined to form the composite signal (Claim 18).

Regarding claim 23, Nicholls teaches in the base housing: a) transceiver circuitry; and b) separation circuitry adapted to separate the first and second receive signals from the composite signal in the base station electronics, wherein the first and second receive signals are provided to transceiver circuitry (Claim 19).

Regarding claim 24, Nicholls teaches in the base housing, second translation circuitry adapted to translate the first receive signal to being centered about the first center frequency prior to providing the first receive signal to the transceiver circuitry (Claim 20).

Regarding claim 25, Nicholls teaches wherein the second receive signal is translated to a third center frequency before being combined with the first receive signal to form the composite signal, and further comprising third translation circuitry adapted to translate the second receive signal to being centered about the first center frequency prior to providing the second receive signal to the transceiver circuitry (Claim 21).

Regarding claim 26, Nicholls teaches wherein the first and second receive signals correspond to a cellular signal transmitted from a cellular communication device (Claim 22).

Regarding claim 27, Nicholls teaches wherein the first and second antennas are associated with one of a plurality of sectors for the base station environment (Claim 23).

Regarding claim 28, Nicholls teaches wherein each sector uses one feeder cable between the masthead and the base housing (Claim 24).

Regarding claim 29, Nicholls teaches wherein the first center frequency is associated with a first cellular band and a fourth center frequency is associated a second cellular band; a third receive signal centered about a third center frequency is received via the first input from the first antenna; a fourth receive signal centered about the third center frequency is received via the second input from the second antenna, the base station electronics in the masthead further comprising second translation circuitry adapted to translate the third receive signal from the first antenna to being centered about a fourth center frequency, the combining circuitry further adapted to combine the third receive signal centered about the third center frequency and the second receive signal to form at least part of the composite signal, which is send to the base housing over the feeder cable (Claim 25).

Regarding claim 30, Nicholls teaches further comprising third translation circuitry adapted to translate the fourth receive signal from the second antenna to being centered about the fourth center frequency, wherein the third receive signal centered about the fourth center frequency is combined with the fourth receive signal centered about the fourth center frequency to form at least part of the composite signal (Claim 26).

Regarding claim 31, system claim 31 is rejected for the same reason as apparatus claim 16 since the recited elements would perform the claimed steps.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW WENDELL whose telephone number is (571)272-0557. The examiner can normally be reached on 8:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 571-272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Wendell/
Examiner, Art Unit 2618

6/30/2009